

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 4294 of 2006 (O&M)

Date of Decision: 18.12.2006

Sudesh Kumar

...Appellant

Versus

Smt. Saroj Kumar and another

....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri H.S. Bakshi, Advocate, for the appellant.

Shri P.S. Rana, Advocate, for the caveator-respondent.

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for permanent injunction filed by the plaintiff-respondents in respect of the land measuring 14 kanals 10 marlas was decreed.

It has been found that the plaintiffs have purchased the said land vide registered sale deed dated 11.4.2001 and that the plaintiffs are in possession thereof. The defendant has alleged possession of the suit land on the basis of an agreement of sale dated 25.6.2003 purportedly agreeing to purchase the suit land for a sum of Rs.3,50,000/-. A sum of Rs.1.00 lac was alleged to be paid as earnest money on the date of the execution of the agreement of sale. The sale deed was to be executed on 24.12.2003. It is the case of the defendant that the possession was delivered to the defendant at the time of execution of the agreement of sale and is so recited in the aforesaid agreement.

Both the Courts have recorded concurrent findings of fact that the defendant has failed to prove execution of the agreement and that the plaintiffs have delivered possession of the land in dispute to the defendant. It has been found that the agreement in original has not been produced and the same has not been admitted in evidence as the same is marked as DA. Still further, the affidavit of Angrej Lal, father of Saroj Kumar, marked as DB, is also not admissible in evidence as Angrej Lal has not been examined as a witness. In the absence of a proof of execution of the agreement, the recitals therein cannot be used by the defendant to prove his possession.

I do not find any patent illegality or material irregularity in the findings recorded by the Courts below, which may give rise to a substantial question of law in the present appeal.

Hence, the present appeal is dismissed in limine.

18-12-2006
ds

(HEMANT GUPTA)
JUDGE